

### **IC 30-4-3**

#### **Chapter 3. Rules Governing the Rights, Powers, Duties, Liabilities, and Remedies of the Parties to a Trust**

### **IC 30-4-3-1**

#### **Power to revoke or modify**

##### **Sec. 1. (Power to Revoke or Modify)**

(a) The settlor may reserve the power to revoke or modify a trust to the extent provided by its terms, and, unless the terms provide otherwise, a reservation of the power to revoke will be deemed to include the power to modify.

(b) If the settlor reserves an unrestricted power to modify, it may be treated as a power of revocation.

(c) In exercising his power to modify the terms of the trust the settlor may not enlarge the duties of the trustee without the trustee's express consent.

(d) Unless the terms of the trust provide otherwise, a power of revocation or modification may only be exercised by the settlor personally.

*(Formerly: Acts 1971, P.L.416, SEC.4.)*

### **IC 30-4-3-2**

#### **Power to restrain transfer of a beneficiary's interest**

Sec. 2. (a) The settlor may provide in the terms of the trust that the interest of a beneficiary may not be either voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee.

(b) Except as otherwise provided in subsection (c), if the settlor is also a beneficiary of the trust, a provision restraining the voluntary or involuntary transfer of his beneficial interest will not prevent his creditors from satisfying claims from his interest in the trust estate.

(c) Subsection (a) applies to a trust that meets both of the following requirements, regardless of whether or not the settlor is also a beneficiary of the trust:

(1) The trust is a qualified trust under 26 U.S.C. 401(a).

(2) The limitations on each beneficiary's control over the beneficiary's interest in the trust complies with 29 U.S.C. 1056(d).

(d) A trust containing terms authorized under subsection (a) may be referred to wherever appropriate as a trust with protective provisions.

*(Formerly: Acts 1971, P.L.416, SEC.4.) As amended by P.L.287-1987, SEC.2.*

### **IC 30-4-3-3**

#### **Powers of trustees**

##### **Sec. 3. Unless the terms of the trust provide otherwise:**

(a) Subject to subsection (c) of this section, a trustee has the power to perform without court authorization, except as provided in IC 30-4-3-4(b) and IC 30-4-3-5(a), every act necessary or appropriate

for the purposes of the trust including, by way of illustration and not of limitation, the power:

- (1) to deal with the trust estate; to buy, sell, or exchange and convey or transfer all property (real, personal, or mixed) for cash or on credit and at public or private sale with or without notice; and to invest and reinvest the trust estate;
- (2) to receive additions to the assets of the trust;
- (3) to acquire an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest;
- (4) to manage real property in every way, including, among other things, the adjusting of boundaries; erecting, altering or demolishing buildings; dedicating of streets, alleys, or other public uses; subdividing; developing; obtaining vacation of plats; granting of easements and rights-of-way; partitioning; entering into party wall agreements and obtaining title insurance for trust property;
- (5) to grant options concerning disposition of trust property, including the sale of covered security options, and to take options for acquisition of trust property, including the purchase back of previously sold covered security options;
- (6) to enter into a lease as lessor or lessee, with or without option to renew;
- (7) to enter into arrangements for exploration and removal of minerals or other natural resources and enter into a pooling or unitization agreement;
- (8) to continue the operation or management of any business or other enterprise placed in trust;
- (9) to borrow money, to be repaid from trust property or otherwise, and to encumber, mortgage, pledge, or grant a security interest in trust property in connection with the exercise of any power;
- (10) to advance money for the benefit of the trust estate and for all expenses or losses sustained in the administration of the trust and to collect any money advanced, without interest or with interest, at no more than the lowest rate prevailing when advanced;
- (11) to prosecute or defend actions, claims, or proceedings for the protection of trust property and of himself in the performance of his duties;
- (12) to pay or contest any claim, to settle a claim by or against the trust by compromise or arbitration, and to abandon or release, totally or partially, any claim belonging to the trust;
- (13) to insure the trust estate against damage or loss and the trustee against liability with respect to third persons;
- (14) to pay taxes, assessments, and other expenses incurred in the acquisition, retention, and maintenance of the trust property and in the administration of the trust;
- (15) to vote securities, in person or by a general or special proxy; to hold the securities in the name of a nominee if the trustee is a corporate trustee; and to effect or approve, and

deposit securities in connection with, any change in the form of the corporation including, among other things, dissolution, liquidation, reorganization, acquisition, and merger;

(16) to employ persons, including, among others, attorneys, accountants, investment advisors, and agents, to advise and assist the trustee in the performance of his duties;

(17) to effect distribution of property in cash, in kind, or partly in cash and partly in kind, in divided or undivided interests; and

(18) to execute and deliver all instruments necessary or appropriate to accomplishing or facilitating the exercise of the trustee's powers.

(b) Any act under subdivision (4) of subsection (a) of this section, an option under subdivision (5), a lease under subdivision (6), an arrangement under subdivision (7), and an encumbrance, mortgage, pledge, or security interest under subdivision (9) may be for a term either within or extending beyond the term of the trust.

(c) In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for any trust, the trustee thereof shall exercise the judgment and care required by IC 30-4-3.5. Within the limitations of the foregoing standard, the trustee is authorized to acquire and retain every kind of property, real, personal, or mixed, and every kind of investment, including specifically, but without in any way limiting the generality of the foregoing, bonds, debentures, and other corporate obligations, stocks, preferred or common, and real estate mortgages, which persons of prudence, discretion, and intelligence acquire or retain for their own account, and within the limitations of the foregoing standard, the trustee is authorized to retain property properly acquired, without limitation as to time and without regard to its suitability for original purchase. Within the limitations of the foregoing standard the trustee is authorized to sell covered security options and to purchase back previously sold covered security options.

(d) If a distribution of particular trust assets is to be made to two (2) or more beneficiaries entitled to receive fractional shares in those assets, the trustee may distribute the particular assets without distributing to each beneficiary a pro rata share of each asset. However, the trustee shall:

(1) distribute to each beneficiary a pro rata share of the total fair market value of all of the particular assets as of the date of distribution; and

(2) cause the distribution to result in a fair and equitable division among the beneficiaries of capital gain or loss on the assets.

*(Formerly: Acts 1971, P.L.416, SEC.4.) As amended by Acts 1977, P.L.300, SEC.1; P.L.277-1983, SEC.1; P.L.137-1999, SEC.1.*

#### **IC 30-4-3-4**

##### **Exercise of powers by multiple, successor, or surviving trustees**

Sec. 4. (Exercise of Powers by Multiple, Successor, or Surviving Trustees)

Unless the terms of the trust provide otherwise:

(a) Any power vested in two (2) trustees must be exercised by them jointly; any power vested in three (3) or more trustees must be exercised by a majority.

(b) If there are two (2) or more trustees and they are unable to exercise a power under subsection (a) of this section:

(1) If there is an immediate risk of irreparable damage to the trust property or the interest of any beneficiary before court approval could be obtained, any trustee may exercise the power and petition the court for approval after the power has been exercised; but

(2) if there is no immediate risk of irreparable damage to the trust property or the interest of any beneficiary, any trustee may petition the court for permission to exercise the power, but none may exercise the power prior to obtaining permission from the court.

(c) A co-trustee is excused from liability incurred because of the exercise by a majority of a power vested in three (3) or more trustees if he:

(1) refuses to join in the exercise of the power and mails a written dissent to any of the co-trustees; or

(2) if the power was exercised without his knowledge, mails a written dissent to any co-trustee within a reasonable time after being informed that it has been exercised.

(d) A successor trustee, additional trustee or surviving or remaining co-trustee may exercise all powers previously vested in the predecessor trustee or co-trustee.

*(Formerly: Acts 1971, P.L.416, SEC.4.)*

### **IC 30-4-3-5**

#### **Conflict of interest in exercise of powers**

Sec. 5. (Conflict of Interest in Exercise of Powers)

(a) If the duty of the trustee in the exercise of any power conflicts with his individual interest or his interest as trustee of another trust, the power may be exercised only with court authorization.

(b) For the purposes of subsection (a) of this section, the interest of an affiliate of the trustee will be deemed to be the interest of the trustee.

*(Formerly: Acts 1971, P.L.416, SEC.4.)*

### **IC 30-4-3-6**

#### **Duties of the trustee**

Sec. 6. (a) The trustee has a duty to administer a trust according to its terms.

(b) Unless the terms of the trust provide otherwise, the trustee also has a duty to do the following:

(1) Administer the trust in a manner consistent with IC 30-4-3.5.

(2) Take possession of and maintain control over the trust property.

(3) Preserve the trust property.

(4) Make the trust property productive for both the income and

remainder beneficiary. As used in this subdivision, "productive" includes the production of income or investment for potential appreciation.

(5) Keep the trust property separate from the trustee's individual property and separate from or clearly identifiable from property subject to another trust.

(6) Maintain clear and accurate accounts with respect to the trust estate.

(7) Upon reasonable request, give the beneficiary complete and accurate information concerning any matter related to the administration of the trust and permit the beneficiary or the beneficiary's agent to inspect the trust property, the trustee's accounts, and any other documents concerning the administration of the trust.

(8) Take whatever action is reasonable to realize on claims constituting part of the trust property.

(9) Defend actions involving the trust estate.

(10) Supervise any person to whom authority has been delegated.

*(Formerly: Acts 1971, P.L.416, SEC.4.) As amended by P.L.198-1996, SEC.1; P.L.137-1999, SEC.2.*

#### **IC 30-4-3-7**

##### **Self-dealing; transactions between trusts**

Sec. 7. (a) Unless the terms of the trust provide otherwise, the trustee has a duty:

(1) not to loan funds to himself or an affiliate;

(2) not to purchase or participate in the purchase of trust property from the trust for the trustee's own or an affiliate's account;

(3) not to sell or participate in the sale of the trustee's own or an affiliate's property to the trust; or

(4) if a corporate trustee, not to purchase for or retain in the trust its own or a parent or subsidiary corporation's stock, bonds, or other capital securities. However, the trustee may retain such securities already held in trusts created prior to September 2, 1971.

(b) Unless the terms of the trust provide otherwise, a corporate trustee may invest in, purchase for, or retain in the trust its own or an affiliate's obligations, including savings accounts and certificates of deposit, without the investment, purchase, or retention constituting a conflict of interest under section 5 of this chapter.

(c) Unless the terms of the trust provide otherwise, a corporate trustee does not violate subsection (a) by investing in, purchasing for, or retaining in the trust its own or an affiliate's obligations, including savings accounts and certificates of deposit, if the payment of each obligation is fully insured by the Bank Insurance Fund or the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or any insurer approved by the department of financial institutions under

IC 28-7-1-31.5.

(d) If the terms of the trust permit the trustee to deal with a beneficiary for the trustee's own account, the trustee has a duty to deal fairly with and to disclose to the beneficiary all material facts related to the transaction which the trustee knows or should know.

(e) Unless the terms of the trust provide otherwise, the trustee may sell, exchange, or participate in the sale or exchange of trust property from one (1) trust to himself as trustee of another trust, provided the sale or exchange is fair and reasonable with respect to the beneficiaries of both trusts and the trustee discloses to the beneficiaries of both trusts all material facts related to the sale or exchange which the trustee knows or should know.

*(Formerly: Acts 1971, P.L.416, SEC.4.) As amended by Acts 1982, P.L.171, SEC.118; P.L.174-1986, SEC.1; P.L.8-1991, SEC.34; P.L.176-1996, SEC.34.*

### **IC 30-4-3-8**

#### **Duties of co-trustees**

Sec. 8. (Duties of Co-Trustee)

Unless the terms of the trust provide otherwise, if there are two (2) or more trustees, each has a duty to:

- (a) participate in the administration of the trust;
- (b) take whatever action is reasonable to prevent a co-trustee from committing a breach of trust; and
- (c) take whatever action is reasonable to compel a co-trustee to redress a breach of trust.

*(Formerly: Acts 1971, P.L.416, SEC.4.)*

### **IC 30-4-3-9**

#### **Duty of trustee under control of third persons**

Sec. 9. (Duty of Trustee under Control of Third Person)

(a) If the terms of the trust give a person a power to direct the trustee in the administration of the trust and those terms expressly direct the trustee to rely, or relieve the trustee from liability if he does rely, on that person's directions, the trustee may do so and will incur no liability for any loss to the trust estate.

(b) If the terms of the trust give a person a power to direct the trustee in the administration of the trust, except as provided in subsection (a) of this section:

(1) If the person holds the power as a fiduciary, the trustee has a duty to refuse to comply with any direction which he knows or should know would constitute a breach of a duty owed by that person as a fiduciary.

(2) If the person holds the power solely for his own benefit, the trustee may refuse to comply only if the attempted exercise of the power violates the terms of the trust with respect to that power.

*(Formerly: Acts 1971, P.L.416, SEC.4.)*

### **IC 30-4-3-10**

#### **Liability to third persons**

Sec. 10. (Liability to Third Persons)

(a) Unless the terms of the contract or other non-negotiable obligation expressly provide otherwise, the trustee is not personally liable on a contract or other non-negotiable obligation with a third person made by him in the administration of the trust.

(b) When a third person is entitled to compensation for injury suffered in the course of the administration of the trust:

(1) If the injury is the result of the trustee's personal act or omission as trustee, the trustee will be personally liable and the injured party will be entitled to satisfaction of his claim from the trustee's individual property first and then, to the extent the claim is yet unsatisfied, from the trust estate.

(2) If the injury is the result of the act or omission of an agent of the trustee, and the agent was properly selected and supervised and there was no improper delegation of authority to the agent, the injured party will be entitled to satisfaction of his claim from the trust estate first and then, to the extent that the claim is yet unsatisfied, from the trustee's individual property.

(3) If the injury is the result of the act or omission of the settlor or his agent, and not that of the trustee or his agent, the injured party will be entitled to satisfaction of his claim from the trust estate and not from the trustee's individual property.

(4) The question of ultimate liability as between the trust estate and the trustee individually, if it is to be determined, shall be determined in a proceeding for accounting, surcharge or indemnification.

*(Formerly: Acts 1971, P.L.416, SEC.4.)*

**IC 30-4-3-11**

**Liability of the trustee to the beneficiary**

Sec. 11. (Liability of the Trustee to the Beneficiary)

(a) The trustee is accountable to the beneficiary for the trust estate.

(b) If the trustee commits a breach of trust, he is liable to the beneficiary for:

(1) any loss or depreciation in the value of the trust property as a result of the breach;

(2) any profit made by the trustee through the breach;

(3) any reasonable profit which would have accrued on the trust property in the absence of a breach; and

(4) reasonable attorney's fees incurred by the beneficiary in bringing an action on the breach.

(c) In the absence of a breach of trust the trustee has no liability to the beneficiary either for any loss or depreciation in value of the trust property or for a failure to make a profit.

(d) The trustee is liable to the beneficiary for acts of an agent which, if committed by the trustee, would be a breach of the trust if he:

(1) directs or permits the act of the agent;

(2) delegates the authority to perform an act to the agent which he

is under a duty not to delegate;

(3) fails to use reasonable care in the selection or retention of the agent;

(4) fails to exercise proper supervision over the conduct of the agent;

(5) approves, acquiesces in or conceals the act of the agent; or

(6) fails to use reasonable effort to compel the agent to reimburse the trust estate for any loss or to account to the trust estate for any profit.

*(Formerly: Acts 1971, P.L.416, SEC.4.)*

### **IC 30-4-3-12**

#### **Liability for breach of trust by co-trustee**

Sec. 12. (Liability for Breach of Trust by Co-Trustee)

A trustee becomes liable to the beneficiary for a breach of trust committed by his co-trustee if he:

(a) participates in the breach of trust;

(b) improperly delegates the administration of the trust to the co-trustee;

(c) approves, acquiesces in or conceals a breach of trust;

(d) enables the co-trustee to commit a breach of trust by his failure to exercise care in the administration of the trust; or

(e) fails to use reasonable effort to compel the co-trustee, or, if the co-trustee has died, his estate, to redress a breach of trust.

*(Formerly: Acts 1971, P.L.416, SEC.4.)*

### **IC 30-4-3-13**

#### **Liability of a successor trustee**

Sec. 13. (Liability of a Successor Trustee)

A successor trustee becomes liable for a breach of trust of his predecessor if he:

(a) fails to take whatever action is necessary to compel the predecessor trustee to deliver the trust property; or

(b) fails to make a reasonable effort to compel a redress of a breach of trust committed by the predecessor trustee.

*(Formerly: Acts 1971, P.L.416, SEC.4.)*

### **IC 30-4-3-14**

#### **Contribution and indemnity**

Sec. 14. (Contribution and Indemnity)

(a) Except as stated in subsection (b) of this section, if two (2) or more co-trustees are liable to the beneficiary, each co-trustee is entitled to contribution from the other, provided, however, that:

(1) if one (1) co-trustee is substantially more at fault than another, the co-trustee who is most at fault is not entitled to contribution, and the other co-trustee is entitled to indemnity from him; or

(2) if one (1) of the co-trustees receives a profit from the administration of the trust or a benefit from a breach of trust, the other co-trustee is entitled to indemnity from him to the extent of the profit or benefit received by that co-trustee.

(b) If a trustee commits a breach of trust in bad faith, he is not entitled to either contribution or indemnity from his co-trustee.  
(Formerly: Acts 1971, P.L.416, SEC.4.)

#### **IC 30-4-3-15**

##### **Remedies of trustee against third persons**

Sec. 15. (Remedies of the Trustee against Third Persons)

The trustee may maintain in his representative capacity a civil action for any legal or equitable remedy against a third person that he could maintain in his own right if he were the owner.

(Formerly: Acts 1971, P.L.416, SEC.4.)

#### **IC 30-4-3-16**

##### **Remedies among co-trustees**

Sec. 16. (Remedies among Co-Trustees)

Any trustee may maintain an action against a co-trustee to:

- (a) compel him to perform his duties under the trust;
- (b) enjoin him from committing a breach of trust; or
- (c) compel him to redress a breach of trust committed by him.

(Formerly: Acts 1971, P.L.416, SEC.4.)

#### **IC 30-4-3-17**

##### **Remedies of trustee against beneficiary**

Sec. 17. (Remedies of Trustee against Beneficiary)

The trustee may maintain a civil action against a beneficiary for any legal or equitable remedy, including, among others, a charge against the beneficiary's interest in the trust estate, in any case in which the beneficiary is liable under 30-4-3-20.

(Formerly: Acts 1971, P.L.416, SEC.4.)

#### **IC 30-4-3-18**

##### **Other remedies of the trustee**

Sec. 18. (Other Remedies of the Trustee)

(a) If there is reasonable doubt with respect to any matter relating to the administration of the trust, the trustee is entitled to be instructed by the court.

(b) The trustee is entitled to a review and settlement by the court of the accounts of his administration.

(c) The trustee is entitled to a lien against the trust estate:

- (1) for any advances made by him under 30-4-3-3(a) (10); and
- (2) for the value of his services for which he is entitled to, but has not received, compensation as provided either under the terms of the trust or under 30-4-5-16.

(Formerly: Acts 1971, P.L.416, SEC.4.)

#### **IC 30-4-3-19**

##### **Relief of trustee's liability for breach of trust**

Sec. 19. (Relief of Trustee's Liability for Breach of Trust)

(a) Unless the terms of the trust provide otherwise or unless if to do so would frustrate, impair or defeat the purposes of the trust, a

beneficiary, except as provided in subsection (b) of this section, relieves the trustee from liability for breach of trust as to that beneficiary's interest if he:

(1) consents to or acquiesces in the act or omission which constitutes a breach of trust;

(2) agrees to release or discharge the trustee from liability for breach of trust after the act or omission constituting the breach occurs;

(3) elects, under an option to affirm or reject a transaction entered into as a breach of trust, to affirm the transaction; or

(4) participates in the act of the trustee which constitutes the breach of trust.

(b) The consent, acquiescence, agreement to release or discharge, affirmance, or participation by a beneficiary will not relieve the trustee from liability if:

(1) at the time it was given the beneficiary was under an incapacity;

(2) at the time it was given the beneficiary did not know of his rights or all of the material facts which the trustee knew or should have known;

(3) it was induced by the trustee's improper conduct;

(4) the trustee had an adverse interest in the transaction and the transaction was not fair and reasonable; or

(5) the trustee pays or delivers a beneficiary's interest to that beneficiary contrary to the terms of a trust with protective provisions.  
(Formerly: Acts 1971, P.L.416, SEC.4.)

### **IC 30-4-3-20**

#### **Liability of beneficiary**

Sec. 20. (Liability of Beneficiary)

(a) A beneficiary is liable for loss to the trust estate if he has:

(1) misappropriated or otherwise wrongfully dealt with the trust property;

(2) expressly consented to, participated in or agreed with the trustee to be liable for a breach of trust committed by the trustee;

(3) failed to repay an advance or loan of trust funds;

(4) failed to repay a distribution or disbursement from the trust estate in excess of that to which he is entitled; or

(5) breached a contract to pay money or deliver property to the trustee to be held by the trustee as part of the trust estate.

(b) Unless the terms of the trust provide otherwise a beneficiary of a trust is liable to the extent of his interest in the trust estate for the amount of any debt owed the trust estate by him.

(Formerly: Acts 1971, P.L.416, SEC.4.)

### **IC 30-4-3-21**

#### **Remedies of beneficiary against third persons**

Sec. 21. (Remedies of the Beneficiary against Third Persons)

If the trustee has a claim against a third person for which he may maintain a civil action under 30-4-3-15 but he is unable, unwilling or

neglects to commence the action within a reasonable time not to exceed thirty (30) days after written demand, any beneficiary may commence the action in his own right for the benefit of all the beneficiaries.

*(Formerly: Acts 1971, P.L.416, SEC.4; Acts 1972, P.L.11, SEC.13.)*

### **IC 30-4-3-22**

#### **Remedies of the beneficiary against the trustee**

Sec. 22. (Remedies of the Beneficiary against the Trustee)

(a) A beneficiary of a trust may maintain an action:

(1) to compel the trustee to perform his duties;

(2) to enjoin the trustee from committing an act which may be a breach of trust;

(3) to compel the trustee to redress a breach of trust; or

(4) to remove a trustee for cause and to appoint a successor trustee.

(b) If the trustee acquires property and wrongfully holds it outside the trust, a beneficiary is entitled at his option to either:

(1) require the property to be transferred to the trust or

(2) impose an equitable lien upon it to secure his claim for damages for breach of trust.

(c) If the trustee commingles the trust funds or property with his own funds or property or converts the trust fund or property into another form which is wrongfully held outside the trust:

(1) if the fund or property can be traced and identified, the beneficiary is entitled to restoration of the fund or property to the trust; or

(2) if the fund or property cannot be traced and identified,

(A) In a case of commingling of funds or property, the beneficiary is entitled to a lien against the trustee's individual property from the date and in the amount of the fund or the value of the property at the time of the commingling.

(B) In a case of conversion of property, the beneficiary is entitled to a lien against the trustee's individual property from the date and according to the value of the property at the time of the conversion.

(d) If the trustee is also a beneficiary, the other beneficiaries will be entitled to a charge against the trustee's beneficial interest to secure their claims against him for a breach of trust.

(e) If a beneficiary successfully maintains an action under subsection (a) of this section or is entitled to a judgment under subsections (b), (c), or (d) of this section, he is entitled to a judgment for reasonable attorney's fees.

*(Formerly: Acts 1971, P.L.416, SEC.4.)*

### **IC 30-4-3-23**

#### **Remedy of a beneficiary against a co-beneficiary**

Sec. 23. (Remedy of a Beneficiary against a Co-Beneficiary)

(a) If no recovery can be made from the trustee for a breach of trust, a beneficiary may maintain an action against a co-beneficiary who consented to the breach for a redress of the breach, if the

co-beneficiary:

(1) knows or should have known that the act of the trustee to which he consented constituted a breach of trust;

(2) agreed with the trustee or the other beneficiaries to be liable for any loss which might result from the act constituting the breach; or

(3) participated in the act constituting the breach.

(b) The consenting co-beneficiary shall be personally liable for any loss for which the other beneficiaries are entitled to redress under subsection (a) of this section and his beneficial interest in the trust estate may be charged for the amount of the loss if the court deems it proper to do so.

*(Formerly: Acts 1971, P.L.416, SEC.4.)*

### **IC 30-4-3-24**

#### **Power to terminate a trust**

Sec. 24. (Power to Terminate a Trust)

(a) On petition by a trustee or beneficiary, the court may, in its discretion, terminate the trust:

(1) if the purpose of the trust has been fulfilled or has become illegal or impossible of fulfillment; or

(2) if, owing to circumstances not known to the settlor and not anticipated by him, the continuance of the trust would defeat or substantially impair the accomplishment of the purpose of the trust.

(b) The court shall include in its order under subsection (a) of this section a provision making such a distribution of the trust estate as the court deems most nearly in conformance with the settlor's intent.

*(Formerly: Acts 1971, P.L.416, SEC.4.)*

### **IC 30-4-3-25**

#### **Rescission and reformation**

Sec. 25. (Rescission and Reformation)

Upon petition by an interested party, the court may rescind or reform a trust according to the same general rules applying to rescission or reformation of non-trust transfers of property.

*(Formerly: Acts 1971, P.L.416, SEC.4.)*

### **IC 30-4-3-26**

#### **Power to direct a deviation from the terms of the trust**

Sec. 26. (Power to Direct a Deviation from the Terms of the Trust)

(a) Upon petition by the trustee or a beneficiary, the court shall direct or permit the trustee to deviate from a term of the trust if, owing to circumstances not known to the settlor and not anticipated by him, compliance would defeat or substantially impair the accomplishment of the purposes of the trust. In that case, if necessary to carry out the purposes of the trust, the court may direct or permit the trustee to do acts which are not authorized or are forbidden by the terms of the trust, or may prohibit the trustee from performing acts required by the terms of the trust.

(b) The trustee may deviate from the terms of the trust as provided in subsection (a) of this section, without first obtaining the permission of the court, if there is an emergency or if he reasonably believes that there is an emergency, and before deviating he has no opportunity to apply to the court for permission to deviate.

(c) The trustee is liable for any loss or damage which results if he fails to apply to the court for permission to deviate from the terms of the trust, when he knows or should know that, owing to circumstances not known to the settlor and not anticipated by him, compliance will defeat or substantially impair the accomplishment of the purposes of the trust.

*(Formerly: Acts 1971, P.L.416, SEC.4.)*

### **IC 30-4-3-27**

#### **Cy pres doctrine**

Sec. 27. (Cy Pres Doctrine) (a) If property is given to a trust for a benevolent public purpose and the property is to be applied to a particular charitable purpose, and it is or becomes impossible, impracticable, or illegal to carry out the particular purpose, and if the settlor manifested a more general intention to devote the property to charitable purposes, the trust need not fail, but the court may direct the application of the property to some charitable purpose which falls within the general charitable intention of the settlor.

(b) A living heir of the settlor or a living beneficiary named in the original trust agreement may present evidence to the court of:

- (1) the heir's or beneficiary's opinion of the settlor's intent; and
- (2) the heir's or beneficiary's wishes;

regarding the property given in trust.

*(Formerly: Acts 1971, P.L.416, SEC.4.) As amended by P.L.41-2000, SEC.3.*

### **IC 30-4-3-28**

#### **Power of the court to modify a trust**

Sec. 28. (Power of the Court to Modify a Trust)

The court may modify the terms of the trust to give the settlor the power to revoke or modify if:

- (1) he intended to reserve the power; and
- (2) he believed he had reserved the power; and
- (3) the power was omitted from the terms of the trust by mistake.

*(Formerly: Acts 1971, P.L.416, SEC.4.)*

### **IC 30-4-3-29**

#### **Removal, resignation, and appointment of trustees for trusts executed after June 30, 1996**

Sec. 29. (a) A trustee may be removed as follows:

- (1) By the court.
- (2) By the person, if any, who by the terms of the trust is authorized to remove the trustee.
- (3) Unless the terms of the trust instrument provide otherwise, by a beneficiary of the trust whose petition is granted by the

court under subsection (e).

(b) Upon petition by the trustee the court may, in its discretion, permit the trustee to resign if the trustee's resignation will not be detrimental to the trust.

(c) Unless a successor trustee is named in or selected according to a method prescribed in the terms of the trust, the court may appoint a trustee to replace a removed, resigned, or deceased trustee and, on petition by a party to the trust, may appoint a co-trustee if to do so would facilitate more effective administration of the trust. The court shall inquire into the qualifications of a proposed successor trustee and give due consideration to the intentions of the settlor of the trust before appointing a successor trustee.

(d) For good cause shown, the court may at any time appoint a temporary trustee for such period of time, and to perform such duties, as the court may direct.

(e) This subsection applies only to a trust executed after June 30, 1996. A beneficiary of a trust may petition the court for the removal of a corporate trustee if there has been a change in control of the corporate trustee after the date of the execution of the trust. The court may remove the corporate trustee if the court determines the removal is in the best interests of all the beneficiaries of the trust. For purposes of this subsection a change in control of the corporate trustee occurs whenever a person or group of persons acting in concert acquires the beneficial ownership of an aggregate of at least twenty-five percent (25%) of the outstanding shares of voting stock of:

(1) a trustee; or

(2) a corporation controlling a trustee;

after June 30, 1996.

*(Formerly: Acts 1971, P.L.416, SEC.4.) As amended by P.L.199-1996, SEC.1; P.L.165-2002, SEC.6.*

### **IC 30-4-3-29.5**

#### **Corporate trustee that acquires trust due to change in control**

Sec. 29.5. (a) Except as provided in subsection (b) and unless the trust instrument provides otherwise, a corporate trustee that acquires a trust as a result of a change in control may not:

(1) decline to accept the trust property;

(2) resign as trustee; or

(3) otherwise refuse to administer the trust;

based upon the amount of property or funds held in the trust estate.

(b) A court may, at the court's discretion, allow a trustee described in subsection (a) to resign if:

(1) the trustee petitions the court; and

(2) the court determines that the trustee's resignation will be in the best interests of all the beneficiaries of the trust.

*As added by P.L.199-1996, SEC.2.*

### **IC 30-4-3-30**

#### **Effect of this article on the court's equity powers**

Sec. 30. (Effect of This Article on the Court's Equity Powers)

Except as otherwise provided in this article, the article shall not be construed to limit the general equity powers of the court over the administration of trusts.

*(Formerly: Acts 1971, P.L.416, SEC.4.)*

**IC 30-4-3-31**

**Judicial modification of trusts for benevolent public purpose and certain transfers not in trust; federal compliance**

Sec. 31. (a) This section is enacted for the purpose of confirming the power of Indiana courts to modify trusts for a benevolent public purpose, and transfers not in trust as described in Section 170(f)(3)(A) of the Internal Revenue Code, to effect compliance with Sections 170, 664, 2055, 2106, and 2522 of the Internal Revenue Code so that these trusts and transfers may obtain the income tax exemption afforded by Section 664 of the Internal Revenue Code and donors or other contributors of gifts or contributions to these trusts and transfers may secure the income, estate, and gift tax charitable deductions granted by Sections 170, 2055, 2106, and 2522 of the Internal Revenue Code.

(b) Upon petition, any court of general or probate jurisdiction in Indiana may, in its discretion, modify the instrument of an inter vivos or testamentary trust for a benevolent public purpose, or transfer not in trust as described in Section 170(f)(3)(A) of the Internal Revenue Code, so that the trust or transfer complies with and conforms to the provisions of Sections 170, 664, 2055, 2106, and 2522 of the Internal Revenue Code and regulations thereunder from the date of the trust's or transfer's creation, if consent to the modification is given by:

- (1) all beneficiaries of the trust or transfer; and
- (2) the settlor of the trust or transfer if the settlor is living at the date of modification.

*(Formerly: Acts 1973, P.L.294, SEC.1.) As amended by Acts 1977, P.L.301, SEC.1; Acts 1982, P.L.180, SEC.1; P.L.2-1987, SEC.46; P.L.41-2000, SEC.4.*

**IC 30-4-3-32**

**Trustee's liability for breach of trust**

Sec. 32. (a) Except as stated in subsections (b) and (c), the trustee, by provisions of the trust, can be relieved of liability for breach of trust.

(b) A provision in the trust instrument is not effective to relieve the trustee of liability for breach of trust committed in bad faith, intentionally, or with reckless indifference to the interest of the beneficiary, or of liability for any profit that the trustee has derived from a breach of trust.

(c) A provision that relieves the trustee of liability for breach of trust is ineffective if it is inserted in the trust instrument as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

*As added by P.L.149-1984, SEC.1.*